

§ 213.101

5 CFR Ch. I (1–15 Edition)

SOURCE: 46 FR 20147, Apr. 3, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 213.101 Definitions.

In this chapter:

(a) Excepted service has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service.

(b) *Excepted position* means a position in the excepted service.

(5 U.S.C. 2103)

§ 213.102 Identification of positions in Schedule A, B, C, or D.

(a) As provided in 5 U.S.C. 3302, the President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) Necessary exceptions of positions from the competitive service; and

(2) Necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of title 5, U.S. Code.

(b) The President delegated authority to the Office of Personnel Management (OPM) in Civil Service Rule VI to except positions from the competitive service when OPM determines that:

(1) Appointments thereto through competitive examination are not practicable; or

(2) Recruitment from among students attending qualifying educational institutions or individuals who have recently completed qualifying educational programs can better be achieved by devising additional means for recruiting and assessing candidates that diverge from the processes generally applicable to the competitive service.

(3)(i) Upon determining that any position or group of positions, as defined in § 302.101(c), should be excepted indefinitely or temporarily from the competitive service, the Office of Personnel Management will authorize placement of the position or group of

positions into Schedule A, B, C, or D, as applicable. Unless otherwise specified in a particular appointing authority, an agency may make Schedule A, B, C, or D appointments on either a permanent or nonpermanent basis, with any appropriate work schedule (*i.e.*, full-time, part-time, seasonal, on-call, or intermittent).

(ii) When OPM establishes eligibility requirements (e.g., residence, family income) for appointment under particular Schedule A, B, or D exceptions, an individual's eligibility for appointment must be determined before appointment and without regard to any conditions that will result from the appointment.

(c) For purposes of making any such determinations, *positions* includes:

(1) Those that are intended to be removed indefinitely from the competitive service because the nature of the position itself precludes it from being in the competitive service (e.g., because it is impracticable to examine for the knowledge, skills, and abilities required for the job); and

(2) Those that are intended to be removed temporarily from the competitive service to allow for targeted recruiting and hiring from among a particular class of persons, as defined by the Office of Personnel Management, with the opportunity for the persons selected for those positions to convert to the competitive service at a later date.

[77 FR 28213, May 11, 2012]

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, C, and D.

(a) Schedule A, B, C, and D appointing authorities available for use by all agencies will be published as regulations in the FEDERAL REGISTER and the Code of Federal Regulations.

(b) Establishment and revocation of Schedule A, B, and C appointing authorities applicable to a single agency shall be published monthly in the Notices section of the FEDERAL REGISTER.

(c) A consolidated listing of all Schedule A, B, and C authorities current as of June 30 of each year, with assigned authority numbers, shall be

published annually as a notice in the FEDERAL REGISTER.

[47 FR 28902, July 2, 1982, as amended at 62 FR 18505, Apr. 16, 1997; 77 FR 28213, May 11, 2012]

§213.104 Special provisions for temporary, time-limited, intermittent, or seasonal appointments in Schedule A, B, C, or D.

(a) When OPM specifies that appointments under a particular Schedule A, B, C, or D authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, C, or D, those terms have the following meaning:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, C, or D exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.

(2) *Intermittent positions* are positions in which work recurs at sporadic or irregular intervals so that an employee's tour of duty cannot be scheduled in advance of the administrative workweek.

(3) *Seasonal positions* involve annually recurring periods of employment lasting less than 12 months each year.

(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:

(1) *Service limits*. Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, C, or D authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position (*i.e.*, a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments*. Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A, B, C, or D if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and non-Federal organizations.

(3) *Exceptions to the general limits*. The service limits and restrictions on refilling positions set out in this section do not apply when:

(i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of §213.3102 and paragraphs (a), (b), and (c) of §213.3402, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

(iii) OPM approves extension of specific temporary appointments beyond 2 years (24 months total service) when necessitated by major reorganizations or base closings or other rare and unusual circumstances. Requests based on major reorganization, base closing,